

## **REMARKS**

In the Official Action, the Examiner rejected claims 1-3 and 5-20. By the present Amendment and Response, claim 17 has been amended. Upon entry of the amendment, claims 1-3 and 5-20 will remain pending in the present patent application. Reconsideration of the rejections and allowance of all pending claims is respectfully requested.

### **Rejections Under 35 U.S.C. § 112**

The Examiner rejected claim 17 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In the Office Action, the Examiner rejected claim 17 because “the limitation ‘desired’ is indefinite.” By the present amendment, claim 17 no longer includes the word “desired.” Accordingly, Applicants respectfully assert that amended claim 17 now satisfies the requirements of 35 U.S.C. §112, first paragraph, and that the present amendment does not narrow the scope of claim 17.

### **Rejections Under 35 U.S.C. § 103**

The Examiner rejected claims 1-3, 7-13 and 15-20 under 35 U.S.C. § 103(a) as being unpatentable over Barnes et al. (U.S. Pat. No. 5,970,475) in view of Day et al. (U.S. 2002/0147757). Additionally, the Examiner rejected claims 5-6 and 14 as being unpatentable over Barnes et al in view of Day et al. and further in view of Lin et al. (U.S. Pat. No. 5,949,415). In response, Applicants are filing herewith a declaration pursuant to 37 C.F.R. § 1.131 to remove

the Day reference as prior art. As both rejections rely on the Day reference, Applicant respectfully asserts that these rejections are overcome.

### **The Day Reference can be removed under Rule 131**

Because the Day reference was issued less than one year prior to the filing date of the present application, the Day reference is clearly not prior art under 35 U.S.C. 102(b). Turning next to 35 U.S.C. §§ 102(a) and 102(e), Section 102(a) states that a person shall be entitled to a patent unless “the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, *before the invention thereof by the applicant for patent.*” (Emphasis added). Similarly, 35 U.S.C. § 102(e) states that a person shall be entitled to a patent unless “the invention was described in - (1) an application for patent, published under **section 122(b)**, by another filed in the United States *before the invention by the applicant* for patent or (2) a patent granted on an application for patent by another filed in the United States *before the invention by the applicant* for patent.” (Emphasis added). Thus, in order for a patent or published application to qualify as prior art under 35 U.S.C. §102(a) or 102(e) against a pending application, it must have been filed or disclosed *prior to the invention date* of the pending application.

Under Rule 131, Applicant may remove alleged prior art from consideration by filing an appropriate declaration that establishes the invention of the claimed subject matter for the rejected claims prior to the effective date of a cited reference. Prior invention may be shown by demonstrating conception of the invention prior to the activity on which the rejection is based coupled with reasonable diligence from prior to the effective date of the reference to

the filing date of the application. Here, Applicant has attached a Declaration signed by Michael Fletcher, which demonstrates that the invention disclosed and claimed in the present application was conceived prior to the April 7, 2001 filing date of the Day reference and was constructively reduced to practice with reasonable diligence from prior to the filing date of the Day reference.

The Applicant's conception date is amply supported by figures prepared prior to April 7, 2001. *See* Exhibit A and Declaration of Michael Fletcher under 37 C.F.R. § 1.131 (hereafter referred to the "Declaration"), paragraph 3. Moreover, Applicant also provides evidence of reasonable diligence from prior to April 7, 2001, the filing date of the Day reference, until the filing of the present application on May 15, 2001. This reasonable diligence is also supported by a copy of three letters from the attorney that prepared the present application, which are attached to the Declaration as Exhibits B, C, and D, and a letter from an inventor to the attorney, which is attached to the Declaration as Exhibit E.

Based on the Declaration of Mr. Fletcher and the attached Exhibits, it is clear that Applicant's attorney began work on the present application prior to April 7, 2001. *See* Declaration, paragraph 4 and Exhibit B. Specifically, by about March 23, 2001, Mr. Ralph Graham, Applicant's attorney, prepared a draft patent application of the present application and forwarded it to the inventors for comment. *See* Declaration, paragraph 6 and Exhibit B. On about April 21, 2001, Mr. Graham mailed a letter to an inventor to execute a declaration. *See* Declaration, paragraph 8 and Exhibit C. On about May 2, 2001, Mr. Graham received a letter from the inventor along with the signed declaration. *See* Exhibit D. On about May 14,

2001, Mr. Graham mailed a final draft of the application to the assignee, Compaq, for final review. *See* Exhibit E. As such, it is clear that the Applicant was reasonably diligent from just before April 7, 2001 until the filing date of the present application on May 15, 2001.

As stated above, the attached Rule 131 Declaration clearly establishes that the date of invention of the claimed subject matter is prior to the filing date of the Day reference. Thus, the Day reference is not applicable as prior art under 35 U.S.C. § 102(a) or § 102(e). For at least these reasons, the Day reference is also not applicable as prior art under 35 U.S.C. §103(a). Accordingly, Applicant respectfully requests withdrawal of the Examiner's rejections and the allowance of all pending claims.

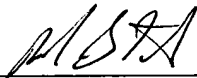
### **Conclusion**

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge the requisite fee of **\$120.00** for a one-month extension of time, and any additional fees which may be required, to the credit card listed on the attached PTO-2038. However, if the PTO-2038 is missing, if the amount listed thereon is insufficient, or if the amount is unable to be charged to the credit card for any other reason, the Commissioner is authorized to charge Deposit Account No. 06-1315; Order No. COMP:0174/FLE (200301931-1).

Respectfully submitted,

Date: April 28, 2005

  
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